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A CORPORATION COMMISSION RECEIVED

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Commissioner

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AZ CORP COMMISSION  
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Arizona Corporation Commission

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In the matter of:

YUCATAN RESORTS, INC., d/b/a  
YUCATAN RESORTS, S.A., RESORT  
HOLDINGS INTERNATIONAL, INC., d/b/a/  
RESORT HOLDINGS INTERNATIONAL,  
S.A., WORLD PHANTASY TOURS, INC.,  
a/k/a MAJESTY TRAVEL a/k/a VIAJES  
MAJESTY, MICHAEL E. KELLY and LORI  
KELLY,

Respondents.

DOCKET NO. S-03539A-03-0000

RESPONDENT WORLD  
PHANTASY'S ANSWER TO  
FIRST AMENDED  
TEMPORARY ORDER TO  
CEASE AND DESIST

Respondent World Phantasy Tours, Inc. ("World Phantasy") answers the First Amended Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("Order") before the Securities Division of the Arizona Corporation Commission as follows:

### JURISDICTION

1. Respondent denies the allegations contained in paragraph 1 and asserts that no securities are involved in the transactions. Therefore, the Arizona Securities Act does not apply and the Arizona Corporation Commission lacks jurisdiction over this matter.

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1           8.     In response to paragraph 31 of the Order, Respondent admits that in the  
2 event a Universal Leaseholder chooses to have third party locate and lease their leased  
3 unit and subsequently selects World Phantasy as a third party leasing agent, the  
4 Universal Leaseholder is instructed by World Phantasy to complete a "Universal Lease  
5 Management Agreement." Respondent denies the remaining allegations contained in  
6 paragraph 31 to the extent those allegations are made against Respondent World  
7 Phantasy. Respondent lacks knowledge or information sufficient to form a belief as to  
8 the truth of the remaining allegations contained in paragraph 31, and therefore denies  
9 the same.

10           9.     Respondent denies the allegations contained in paragraph 32 to the  
11 extent those allegations are made against Respondent World Phantasy. Respondent  
12 lacks knowledge or information sufficient to form a belief as to the truth of the  
13 remaining allegations contained in paragraph 32, and therefore denies the same.

14           10.    In response to paragraph 33 of the Order, Respondent admits that the  
15 "Universal Lease Management Agreement" speaks for itself. Respondent denies the  
16 remaining allegations contained in paragraph 33 to the extent those allegations are  
17 made against Respondent World Phantasy.

18           11.    Respondent denies the allegations contained in paragraphs 34 through 52  
19 to the extent those allegations are made against Respondent World Phantasy.  
20 Respondent lacks knowledge or information sufficient to form a belief as to the truth  
21 of the remaining allegations contained in paragraphs 34 through 52, and therefore  
22 denies the same.

23                                   **VIOLATION OF A.R.S. § 44-1841**

24           12.    Respondent denies each and every allegation contained in paragraphs 53  
25 through 55 to the extent those allegations are made against Respondent World  
26 Phantasy. Respondent lacks knowledge or information sufficient to form a belief as to

1 the truth of the remaining allegations contained in paragraphs 53 through 55, and  
2 therefore denies the same.

3 **VIOLATION OF A.R.S. § 44-1842**

4 13. Respondent denies each and every allegation contained in paragraphs 56  
5 and 57 to the extent those allegations are made against Respondent World Phantasy.  
6 Respondent lacks knowledge or information sufficient to form a belief as to the truth  
7 of the remaining allegations contained in paragraphs 56 and 57, and therefore denies  
8 the same.

9 **VIOLATION OF A.R.S. § 44-1991**

10 14. Respondent denies each and every allegation contained in paragraphs 58  
11 and 59 to the extent those allegations are made against Respondent World Phantasy.  
12 Respondent lacks knowledge or information sufficient to form a belief as to the truth  
13 of the remaining allegations contained in paragraphs 58 and 59, and therefore denies  
14 the same.

15 **GENERAL DENIAL**

16 15. Respondent denies each and every allegation of the Order to Cease and  
17 Desist not specifically admitted.

18 **FIRST DEFENSE**

19 16. Failure to state a claim upon which relief can be granted.

20 **SECOND DEFENSE**

21 17. The alleged transactions do not involve securities. Therefore, Arizona  
22 securities laws do not apply and the Arizona Corporation Commission lacks  
23 jurisdiction to hear the claims.

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**THIRD DEFENSE**

18. Arizona's securities registration statutes and regulations do not apply to the sale of timeshares under an approved timeshare plan, pursuant to, among other things, A.R.S. § 32-2197.

**FOURTH DEFENSE**

19. Lack of personal jurisdiction.

**FIFTH DEFENSE**

20. Lack of subject matter jurisdiction.

**SIXTH DEFENSE**

21. Failure to join indispensable parties.

**SEVENTH DEFENSE**

22. Defective and/or insufficient service of process.

**EIGHTH DEFENSE**

23. Collateral proceedings raise the threat of inconclusive and contrary results. Therefore, this matter should alternatively be stayed pending the outcome of those proceedings.

**NINTH DEFENSE**

24. Any ruling in this action would be unconstitutional under the laws of the State of Arizona and under the laws of the United States of America including failure to provide due process.

**TENTH DEFENSE**

25. The claims asserted are barred by the applicable statutes of limitation.

WHEREFORE, there is no basis for the imposition of liability of any kind or nature, the temporary order to cease and desist should be vacated and there should be no award of any kind or nature against Respondent.

///

1 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of October, 2003.

2 MEYER, HENDRICKS & BIVENS, P.A.

3  
4 By 

5 Tom Galbraith  
6 Kirsten Copeland  
7 3003 N. Central Avenue, Suite 1200  
8 Phoenix, Arizona 85012-2915

9 Attorneys for Respondent  
10 World Phantasy Tours, Inc.

11 ORIGINAL and thirteen copies of the foregoing  
12 hand-delivered this 20<sup>th</sup> day of October, 2003 to:

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 COPY of the foregoing hand-delivered  
18 this 20<sup>th</sup> day of October, 2003 to:

19 Hearing Officer  
20 Hearing Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Jaime Palfai, Esq.  
25 W. Mark Sendrow, Esq.  
26 Securities Division  
Arizona Corporation Commission  
1300 West Washington Street, 3rd Floor  
Phoenix, Arizona 85007

///

///

///

1 COPY of the foregoing sent *via* U.S. Mail  
2 this 27 day of October, 2003 to:

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6 2300 Trammell Crow Center  
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9 Attorneys for Respondent  
10 Yucatan Resorts, Inc., d/b/a Yucatan Resorts, S.A.,  
11 and RHI, Inc., d/b/a RHI, S.A.

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Yucatan Resorts, S.A., and  
RHI, Inc., d/b/a RHI, S.A.

18 Michelle R. Leach

19 360698

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**RECEIVED**  
**BEFORE THE ARIZONA CORPORATION COMMISSION****2003 MAY 20 A 11: 21****AZ CORP COMMISSION  
DOCUMENT CONTROL****COMMISSIONERS**

MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

**In the matter of:**

**YUCATAN RESORTS, INC., d/b/a**  
**YUCATAN RESORTS, S.A.,**  
3222 Mishawaka Avenue.  
South Bend, IN 46615;  
P.O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
Cancun, Q. Roo  
Mexico C.P. 77500

**RESORT HOLDINGS**  
**INTERNATIONAL, INC., d/b/a**  
**RESORT HOLDINGS**  
**INTERNATIONAL, S.A.,**  
3222 Mishawaka Avenue  
South Bend, IN 46615;  
P.O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
Cancun, Q. Roo  
Mexico C.P. 77500

**WORLD PHANTASY TOURS, INC.,**  
**a/k/a MAJESTY TRAVEL**  
**a/k/a VIAJES MAJESTY**  
Calle Eusebio A. Morales  
Edificio Atlantida, P Buja  
APDO, 8301 Zona 7 Panama,

**MICHAEL E. KELLY and LORI KELLY,**  
husband and wife.  
3222 Mishawaka Avenue.  
South Bend, IN 46615;  
P.O. Box 2661  
South Bend, IN 46680

**Respondents.****DOCKET NO. S-03539A-03-0000****TEMPORARY ORDER TO CEASE  
AND DESIST AND NOTICE OF  
OPPORTUNITY FOR HEARING**



Docket No. S-03539A-03-0000

1 NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY  
2 EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING  
3 EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

4 The Securities Division ("Division") of the Arizona Corporation Commission  
5 ("Commission") alleges that Respondents Yucatan Resorts, Inc., (d/b/a Yucatan Resorts, S.A.),  
6 Resort Holdings International, Inc., (d/b/a Resort Holdings International, S.A.), World Fantasy  
7 Tours (a/k/a Majesty Travel and Viajes Majesty), Michael E. Kelly, and Lori Kelly have engaged in  
8 or are about to engage in acts, practices, and transactions that constitute violations of the Securities  
9 Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and that immediate action is required in  
10 the name of public welfare.

## I

## JURISDICTION

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13 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
14 Constitution and the Securities Act.

## II

## RESPONDENTS

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17 2. Respondent Yucatan Resorts, Inc., d/b/a Yucatan Resorts, S.A., ("YUCATAN"), is an  
18 international corporation operating a purported timeshare program based out of Cancun, Mexico.  
19 The company's last known United States business address is 3222 Mishawaka Avenue, South  
20 Bend, Indiana, 46615, along with mailing address P.O. Box 2661, South Bend, Indiana, 46680.

21 3. Respondent Resort Holdings International, Inc., d/b/a Resort Holdings International,  
22 S.A., ("RHI"), is a YUCATAN affiliate and the primary distributor for the YUCATAN timeshare  
23 program. In this capacity, RHI provides promotional services and is responsible for the  
24 recruitment of YUCATAN sales agents. RHI's last known United States business address is also  
25 3222 Mishawaka Avenue, South Bend, Indiana, 46615, along with mailing address P.O. Box  
26 2661, South Bend, Indiana, 46680.



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4. Respondent World Phantasy Tours, Inc., a/k/a Majesty Travel and Viajes Majesty, (hereinafter "WORLD PHANTASY"), is a purported resort management and travel agency operating as the designated servicing agent for the YUCATAN timeshare program. WORLD PHANTASY's last known address is listed as Calle Eusebio A. Morales, Edificio Atlantida, P. Baja, APDO, 8301 Zona 7 Panama.

5. Respondent Michael E. Kelly ("KELLY") is the founder and president of YUCATAN and, in this capacity, KELLY oversees and controls both YUCATAN operations and the resulting proceeds. KELLY'S last known address is that of his company headquarters, 3222 Mishawaka Avenue, South Bend, Indiana, 46615.

6. Respondent Lori Kelly is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

7. At all times relevant hereto, KELLY and Lori Kelly were acting for their own benefit, and for the benefit or in furtherance of the marital community.

8. YUCATAN, RHI, WORLD PHANTASY, and KELLY may collectively be referred to as "RESPONDENTS." Lori Kelly may be referred to as "Respondent Spouse."

### III.

### FACTS

9. Since at least 1999, RESPONDENTS have been directly or indirectly engaged in the offer and sale of securities to the general public in Arizona in the form of investment contracts as defined by Arizona Revised Statutes (A.R.S.) § 44-1801(25).

10. To date, at least 5 Arizona-based YUCATAN sales agents have been identified selling YUCATAN's investment product to well over three hundred investors.

11. The YUCATAN investment opportunity is based on what the issuing company terms its "Universal Lease Program," a program which purportedly offers investors the opportunity to purchase timeshare units in one of various resort properties throughout Mexico and Central America.



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12. YUCATAN's affiliate, RHI, is responsible for marketing the YUCATAN Universal Lease Program by generating and distributing various promotional materials and brochures to YUCATAN sales agents throughout the United States.

13. Under this Universal Lease 'opportunity,' investors are required to invest a minimum of \$5,000 dollars to participate in the program, but they may invest any amount in excess of this minimum. The investment funds are then wired to YUCATAN'S corporate office, which subsequently uses the funds for undisclosed purposes.

14. Although several different company brochures and promotional materials are distributed to prospective investors, YUCATAN investors are never apprised as to the financial condition of YUCATAN or RHI, are never informed as to the uses of YUCATAN investment funds, and are never afforded financial statements reflecting the degree of solvency of either YUCATAN or RHI.

15. According to training materials provide to YUCATAN sales agents, agents are instructed to tell prospective investors that the investment funds are "basically being used" to purchase more resort properties, indicating at least some investor funds are being pooled to provide financing for new acquisitions.

16. Prospective YUCATAN investors are given the option to roll part or all of their IRA or 401K portfolios into the Universal Lease Program, effectively replacing their existing investment holdings with the YUCATAN investment. YUCATAN's Universal Lease application form even provides a separate section for investors to roll their investment portfolios into YUCATAN.

17. A YUCATAN recruiter informed prospective salesmen that approximately 40 percent of all funds coming through the Universal Lease Program will originate out of investor IRAs or other similar retirement accounts.

18. Under YUCATAN's Universal Lease Program, and as represented in RHI's associated promotional materials, investors are purportedly afforded the opportunity to select one of three separate Universal Lease "options." In actuality, options 1 and 2 are illusory choices, effectively leaving option 3 as sole Universal Lease Program alternative.

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19. Evidencing this point, recruiters for prospective YUCATAN sales agents coach their trainees that the Universal Lease's "third option," i.e. the investment selection, is the only selection that need be promoted, offered and sold.

20. Under YUCATAN's alleged "Option 1," investors can purportedly choose to forego any returns on their investments, and instead chose to utilize a timeshare unit themselves. Under this option, RHI assigns to the investor, at RHI's own choosing, a specific unit, for a specific week,<sup>1</sup> and at a specific location, and only after the \$5,000 sum (or more) is received by RHI. The investor has no input into the date, quality or location of this timeshare assignment.

21. Moreover, the Option 1 purchaser must pay annual management fees to RHI for this particular election, ranging from \$380 to \$645 per year (with such amounts subject to Consumer Price Index increases). This translates into an RHI surcharge of \$9,000 to \$16,125 (or more) over the life of the 25 year timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total payment of at least \$14,000 in return for 12 weeks of timeshare access (over a 25 year period) at an undisclosed location during an undisclosed time of year.

22. Consistent with these uninviting terms, this vacationing selection is largely ignored in YUCATAN promotional materials, and the selection receives no coverage in the YUCATAN recruitment seminar for prospective salesmen. Equally relevant, this option would simply have no applicability to the many investors rolling retirement funds into the YUCATAN program.

23. YUCATAN's Universal Lease "Option 2," which ostensibly allows YUCATAN customers to rent out assigned timeshare units themselves, contains many of the same prohibitive costs and conditions as that of Option 1. This Option again requires the purchaser to forego any guaranteed investment returns, and instead imposes substantial annual maintenance fees on the purchaser for the full 25 year lease term. Prospective Option 2 purchasers must also await a determination by RHI,

<sup>1</sup> According to the promotional materials, a \$5,000 YUCATAN investor electing the purported "option 1" receives access to the assigned timeshare unit only *every other year*, or only 12 to 13 weeks during the 25 year lease period.

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1 after the purchase has been made, as to the location, resort type and permitted dates of use for the  
2 timeshare. The undesirability of this selection is further conveyed by RHI's brochure warning that  
3 this self-renting option will not bring in the same level of revenues as would a professional third  
4 party servicing agent.

5 24. Beyond the apparent financial disincentives, the YUCATAN promotional materials provide  
6 no discussion, comments or guidance over the advantages of selecting option 2, other than the brief  
7 suggestion that this self-renting option could be carried out through the "simple placing of an  
8 advertisement in the local paper." This claim ignores the obvious logistical concerns presented by  
9 placing newspaper advertisements in a foreign country and in a city whose official language is not  
10 English. Nor does it take into concern the impracticality of overseeing the rental of a weekly  
11 timeshare unit hundreds or even thousands miles away.

12 25. As with Option 1, Option 2 of the Universal Lease Program is also conspicuously  
13 overlooked in connection with YUCATAN's efforts to recruit and train additional YUCATAN sales  
14 agents. Far from providing an overview of Option 2, a YUCATAN recruiter plainly indicated to  
15 prospective sales agents that the only Universal Lease option of interest for sales agents was the  
16 investment option, Option 3.

17 26. Unlike the illusory selections of Options 1 and 2, Option 3 is repeatedly touted, highlighted  
18 and glorified in YUCATAN's Universal Lease literature. According to YUCATAN and RHI's  
19 promotional brochures, investors who "select" Option 3 would be eligible to receive a 9 per cent per  
20 annum return on their timeshare investments every year for a period of 25 years, after which time the  
21 lease would be renewable for another 20 years.

22 27. For an investor to reap the 9 percent per annum return under this Universal Lease option,  
23 the investor was required, as part of his investment, to hire a "third party" management company to  
24 lease the investor's timeshare unit. The YUCATAN materials identify WORLD PHANTASY as the  
25 designated management company for this servicing function. Although the Universal Lease  
26 application does not mandate the selection of WORLD PHANTASY as the investors' servicing



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agent, such a selection is the only listed means under which investors can earn the promised 9 per cent rate of return on their Universal Lease investments.

28. To select WORLD PHANTASY as the servicing agent, investors are instructed to complete a formal "Management Agreement" with the company. This WORLD PHANTASY Management Agreement is bundled with the Universal Lease promotional and application materials, and is the single management company identified for servicing YUCATAN's various resorts.

29. Neither YUCATAN nor RHI disclose any financial relationship with WORLD PHANTASY or indicate whether either company is entitled to receive a percentage of this servicing agent's management fees.

30. The "Universal Lease Management Agreement" states: "The Servicer shall have full power and authority to do those things in connection with such servicing, administration, and collection activities which it may deem necessary in order to maximize the rental.... Client shall furnish the Servicer with powers of attorney and other documents necessary or appropriate as required by the Servicer to enable the Servicer to enable the Servicer to carry out its servicing and administrative duties hereunder."

31. Once investors have made their investments in YUCATAN's Universal Lease Program, and have signed the Management Agreement with WORLD PHANTASY, the investors are allegedly eligible to receive a 9 percent per annum return on their investments for the life of the Universal Lease Program, presently set at 25 years. The investors have no functions or responsibilities following their investments, and YUCATAN, RHI and WORLD PHANTASY purportedly develop new and/or manage existing rental units to generate the profits that support the investors' investment returns.

32. According to the YUCATAN and RHI marketing literature, Option 3 of the Universal Lease provides a multitude of advantages to more traditional investments. The most prominent of these, as demonstrated during a promotional power point presentation delivered by KELLY, is that the Universal Lease Program provides a far superior rate of return than most other investments. A



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1 second claim is that the Universal Lease is supported by "debt-free" resort properties, and that as a  
2 result the YUCATAN investments are fully safe and secured.

3 33. According to YUCATAN promotional literature, Option 3 is also the only Universal Lease  
4 option that also allows investors to recoup up to 5 percent of any loss or liquidation penalty incurred  
5 during the process of rolling other investments into the YUCATAN Universal Lease Program. This  
6 feature is an added incentive for investors to exchange their existing investment portfolios into  
7 Option 3 of the Universal Lease Program.

8 34. Several Arizona YUCATAN sales agents have since become prolific sellers of the  
9 Universal Lease Program's investment option. One such agent recently boasted that he had sold over  
10 300 investments in YUCATAN over the past three plus years.

11 35. Of this sales agent's investors, all known investors had chosen the "investment selection,"  
12 Option 3, and all known investors had chosen WORLD PHANTASY as their third party servicing  
13 agent. Moreover, many of these investors were elderly individuals that made their YUCATAN  
14 investments by rolling part or all of their retirement portfolios into the program. To date, this sales  
15 agent has raised several million dollars in YUCATAN investments.

16 36. Another YUCATAN sales agent recently encouraged a 75-year-old Phoenix resident to roll  
17 over his entire investment portfolio, approximately \$61,000, into Option 3 of the Universal Lease  
18 Program. The elderly gentleman followed the recommendation, moving his entire annuities  
19 portfolio into the YUCATAN Universal Lease Program.

20 37. Still another Arizona YUCATAN sales agent, a former paralegal, admitted that she had  
21 sold several additional YUCATAN Universal Lease investments to investors in the greater Phoenix  
22 area.

23 38. A fourth YUCATAN sales agent succeeded in selling to One Vision Children's  
24 Foundation, Inc. (One Vision), a non-profit organization incorporated in Arizona, a \$1.03 million  
25 investment in the Yucatan Universal Lease Program. Prior to this investment, the YUCATAN sales  
26

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1 agent had recommended that One Vision choose the third investment option and discouraged any  
2 consideration over the other two options.

3 39. Marketing materials provided to investors by the above-referenced YUCATAN sales  
4 agents indicated that "the [YUCATAN] properties were fully insured against loss. All properties are  
5 in compliance [with] the governing laws. Being in compliance with the regulations to sell leases, all  
6 properties are 100% free of debt. As a result, the Leaseholders have a first lien on the YUCATAN  
7 resort properties."

8 40. Arizona-based YUCATAN sales agents repeatedly echoed this claim that these Universal  
9 Lease investments were safe and secure, and that these investments were protected by debt-free  
10 properties. No risk disclosures were made to investors, either during the agents' sales presentations  
11 or through the dissemination of YUCATAN marketing literature.

12 41. YUCATAN sales agents receive commissions constituting at least 10% of the investors'  
13 funds placed into the Universal Lease Program under Option 3. These commission amounts may  
14 increase in cases where affiliated sales agents qualify for sale overrides. The existence of these  
15 commissions has been routinely withheld from YUCATAN investors.

16 42. Yucatan Investment Corp. ("Yucatan Investment") was the subject of an administrative  
17 order of the New Mexico Securities Division on May 18, 1999, for the sale of unregistered, non-  
18 exempt securities by unlicensed agents of nine-month notes. Upon information and belief, Yucatan  
19 Investment is a business entity related to Yucatan.

20 43. Yucatan Investment was also the subject of an administrative order of the South Carolina  
21 Securities Division on July 26, 1999, for the sale of unregistered, non-exempt securities by  
22 unlicensed agents of nine-month notes, and in violation of the anti-fraud provision of South Carolina  
23 securities law.

24 44. Yucatan Investment was also the subject of an administrative order of the Connecticut  
25 Department of Banking, on November 7, 2000, for the sale of unregistered, non-exempt securities by  
26



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1 unlicensed agents of nine-month notes, and in violation of the anti-fraud provision of Connecticut  
2 securities law.

3 45. YUCATAN was the subject of an administrative order of the Wisconsin Securities  
4 Division on March 3, 2001, for the sale of unregistered securities by unlicensed agent and by  
5 unlicensed broker-dealers and of the anti-fraud provision of Wisconsin securities law.

6 46. YUCATAN was also the subject of an administrative order by Oklahoma Department of  
7 Securities in August, 2001, arising out of possible violations of the Oklahoma Securities Act.

8 47. YUCATAN was also the subject of an administrative cease and desist order from the  
9 Pennsylvania Securities Commission in October, 2002, based on multiple registration and fraud  
10 violations as proscribed under the Pennsylvania Securities Act.

11 48. Arizona investors were never informed, either by YUCATAN sales agents or through  
12 YUCATAN promotional literature, that YUCATAN or any YUCATAN-related entities had  
13 previously been the subject of various orders based on multiple violations of state securities laws.

14 IV.

15 VIOLATION OF A.R.S. § 44-1841

16 (Offer or Sale of Unregistered Securities)

17 49. From on or about December 2001, RESPONDENTS offered or sold securities in the form  
18 of investment contracts, within or from Arizona.

19 50. The securities referred to above were not registered pursuant to the provisions of Articles 6  
20 or 7 of the Securities Act.

21 51. This conduct violates A.R.S. § 44-1841.

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Docket No. S-03539A-03-0000

V.

## VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

52. RESPONDENTS offered or sold securities within or from Arizona, while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

53. This conduct violates A.R.S. § 44-1842.

VL

## VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

54. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

a) RESPONDENTS misrepresented the safety of their investments by claiming that Universal Lease investors were fully secured, when in fact the value of RESPONDENTS' real estate holdings was never shown to support the vast amount of funds invested into the program;

b) RESPONDENTS failed to disclose to investors any salient financial and/or background information about the issuer, its affiliates, or its principals;

c) RESPONDENTS failed to disclose to investors that a sales commission of at least 10 percent was routinely paid to YUCATAN sales agents consummating YUCATAN investments;

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Docket No. S-03539A-03-0000

d) RESPONDENTS failed to disclose to investors that administrative orders reflecting prior securities violations have been issued against RESPONDENTS in several other jurisdictions.

55. This conduct violates A.R.S. § 44-1991.

#### VII.

#### TEMPORARY ORDER

THEREFORE, based on the above allegations, and because the Division has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.C.C. R14-4-307, that the RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with them, CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

IT IS FURTHER ORDERED that this Order shall be effective immediately.

#### VIII.

#### REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENTS and/or the marital community of KELLY and Lori Kelly:

1. Order RESPONDENTS to permanently cease and desist from violating the Act, pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

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Docket No. S-03539A-03-0000

4. Order that the marital community of KELLY and Lori Kelly be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

## IX.

## HEARING OPPORTUNITY

All Respondents may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-307. If any Respondent or Respondent Spouse requests a hearing, the Respondent or Respondent Spouse must also answer this Temporary Order and Notice. A request for hearing must be in writing and received by the Commission within 20 business days after service of this Notice of Opportunity for Hearing. Each Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. Notwithstanding the effective 180 day time period cited above, this Temporary Order shall remain in effect from the date a hearing is requested until a decision is entered, unless otherwise ordered by the Commission. After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order with written findings of fact and conclusions of law. A permanent Order may include an order of restitution, administrative penalties, and/or other affirmative action.

If a request for a hearing is not timely made, the Division will request that the Commission make permanent this Temporary Order, with written findings of fact and conclusions of law. These conclusions of law may include an order for restitution, administrative penalties and/or other relief.

Docket No. S-03539A-03-0000

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the accommodation.

X.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if any Respondent or the Respondent Spouse requests a hearing, the Respondent or Respondent Spouse must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

Additionally, any Respondent or the Respondent Spouse must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Jamic Palfai.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each Respondent/Respondent Spouse or their respective attorneys. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When any of the Respondents or the Respondent Spouse intends in good faith to deny only a part or a qualification of an allegation, such Respondent or Respondent Spouse shall specify that

Docket No. S-03539A-03-0000

1 part or qualification of the allegation and shall admit the remainder. Respondents and/or the  
2 Respondent Spouse waive any affirmative defense not raised in the answer.

3 The administrative law judge presiding over the hearing may grant relief from the  
4 requirement to file an Answer for good cause shown.

5 Dated this 20<sup>th</sup> day of May, 2003.

6  
7 Mark Sendrow

8 Mark Sendrow  
9 Director of Securities  
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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

AZ CORP COMMISSION  
DOCUMENT CONTROL

MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

In the matter of:

**YUCATAN RESORTS, INC.,**

3222 Mishawaka Avenue.

South Bend, IN 46615;

P.O. Box 2661

South Bend, IN 46680;

Av. Coba #82 Lote 10, 3er. Piso

Cancun, Q. Roo

Mexico C.P. 77500

**YUCATAN RESORTS, S.A.,**

3222 Mishawaka Avenue.

South Bend, IN 46615;

P.O. Box 2661

South Bend, IN 46680;

Av. Coba #82 Lote 10, 3er. Piso

Cancun, Q. Roo

Mexico C.P. 77500

**RESORT HOLDINGS INTERNATIONAL,**

**INC.,**

3222 Mishawaka Avenue

South Bend, IN 46615;

P.O. Box 2661

South Bend, IN 46680;

Av. Coba #82 Lote 10, 3er. Piso

Cancun, Q. Roo

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**RESORT HOLDINGS INTERNATIONAL,**

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Mexico C.P. 77500

DOCKET NO. S-03539A-03-0000

**FIRST AMENDED TEMPORARY  
ORDER TO CEASE AND DESIST  
AND NOTICE OF OPPORTUNITY  
FOR HEARING**

1 **WORLD PHANTASY TOURS, INC.,** )  
 1 **a/k/a MAJESTY TRAVEL** )  
 2 **a/k/a VIAJES MAJESTY** )  
 2 Calle Eusebio A. Morales )  
 Edificio Atlantida, P Baja )  
 3 APDO, 8301 Zona 7 Panama, )  
 4 **AVALON RESORTS,** )  
 Av. Coba #82 Lote 10, 3er. Piso )  
 5 Cancun, Q. Roo )  
 Mexico C.P. 77500 )  
 6 **MICHAEL E. KELLY and LORY KELLY,** )  
 7 husband and wife, )  
 29294 Quinn Road )  
 8 North Liberty, IN 46554; )  
 3222 Mishawaka Avenue )  
 9 South Bend, IN 46615; )  
 P.O. Box 2661 )  
 10 South Bend, IN 46680, )  
 11 Respondents. )

13 **NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**  
 14 **EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING**  
 15 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

17 The Securities Division ("Division") of the Arizona Corporation Commission  
 18 ("Commission") alleges that Respondents Yucatan Resorts, Inc., Yucatan Resorts, S.A., Resort  
 19 Holdings International, Inc., Resort Holdings International, S.A., World Phantasy Tours, Inc. (a/k/a  
 20 Majesty Travel and Viajes Majesty), Avalon Resorts, Michael E. Kelly and spouse Lory Kelly have  
 21 engaged in or are about to engage in acts, practices, and transactions that constitute violations of the  
 22 Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and that immediate action is  
 23 required in the name of public welfare.

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I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Respondent Yucatan Resorts, Inc., ("YUCATAN"), is an internationally-based corporation orchestrating a purported timeshare program out of Cancun, Mexico and other Central American locales. The company's current United States business address is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, together with mailing address P.O. Box 2661, South Bend, Indiana, 46680.

3. Respondent Yucatan Resorts, S.A., ("YUCATAN SA"), is a counterpart to YUCATAN with headquarters in the United States, Mexico and Panama. YUCATAN SA contracts with Arizona sales agents and assists in operating the aforementioned Yucatan timeshare program. The company's current United States business address is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, together with mailing address P.O. Box 2661, South Bend, Indiana, 46680.

4. Respondent Resort Holdings International, Inc., ("RHI"), is affiliated with YUCATAN and YUCATAN SA and is the primary distributor for the aforementioned Yucatan timeshare program throughout North America. In this capacity, RHI provides promotional services and is responsible for the recruitment of "timeshare" sales agents. RHI's current United States business address is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, together with mailing address P.O. Box 2661, South Bend, Indiana, 46680.

5. Respondent Resort Holdings International, S.A., ("RHI-SA"), is the counterpart to RHI and is headquartered in the United States, Mexico and Panama. RHI-SA coordinates with RHI to provide promotional assistance and to perform various administrative functions in connection with the aforementioned Yucatan timeshare program. RHI-SA's current United States business address

1 is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, together with mailing address P.O. Box  
2 2661, South Bend, Indiana, 46680.

3 6. Respondent World Phantasy Tours, Inc., a/k/a Majesty Travel and Viajes Majesty,  
4 ("WORLD PHANTASY"), is a purported resort management and travel agency operating as the  
5 designated servicing agent for the aforementioned Yucatan timeshare program. WORLD  
6 PHANTASY's last known address is listed as Calle Eusebio A. Morales, Edificio Atlantida, P  
7 Baja, APDO, 8301 Zona 7 Panama.

8 7. Respondent Avalon Resorts ("AVALON") is a resort development company associated  
9 with YUCATAN, YUCATAN SA, RHI and RHI-SA. AVALON is the exclusive developer of  
10 resort properties throughout Mexico and Central America for inclusion into the aforementioned  
11 Yucatan timeshare program. The company's last known business address is Av. Coba #82 Lote  
12 10, 3er. Piso Cancun, Q. Roo Mexico C.P. 77500, the same Mexican business address as that of  
13 YUCATAN, YUCATAN SA, RHI, and RHI-SA.

14 8. Respondent Michael E. Kelly ("KELLY") is the founder and president of YUCATAN, the  
15 owner, president and director of RHI, and the founder and chairman of AVALON. In these varying  
16 capacities, KELLY directly oversees and/or controls the aforementioned Yucatan timeshare  
17 program, its sales operations, and the expenditure of investor funds. KELLY'S last known United  
18 States addresses are 29294 Quinn Road, North Liberty, Indiana, 46554, and 3222 Mishawaka  
19 Avenue, South Bend, Indiana, 46615 (company headquarters).

20 9. Respondent Lory Kelly is joined in this action under A.R.S. § 44-2031(C) solely for  
21 purposes of determining the liability of the marital community. Lory Kelly's last known residential  
22 address is 29294 Quinn Road, North Liberty, Indiana, 46554.

23 10. At all times relevant hereto, KELLY and Lory Kelly were acting for their own benefit, and  
24 for the benefit or in furtherance of the marital community.

25 ...

26 ...

1 11. YUCATAN, YUCATAN SA, RHI, RHI-SA, WORLD PHANTASY, AVALON and  
2 KELLY may collectively be referred to as "RESPONDENTS." Lory Kelly may be referred to as  
3 "Respondent Spouse."

4 III.

5 FACTS

6 12. Since at least 1999, RESPONDENTS have been directly or indirectly engaged in the offer  
7 and sale of securities to the general public in Arizona in the form of investment contracts as defined  
8 by Arizona Revised Statutes (A.R.S.) § 44-1801(25).

9 13. To date, a minimum of five Arizona-based sales agents have been identified as selling  
10 RESPONDENTS' timeshare investment product to well over three hundred investors.

11 14. RESPONDENTS' investment opportunity is based on what they term the "Universal  
12 Lease" Program, a scheme that purportedly offers investors the opportunity to purchase timeshare  
13 units in one of various AVALON resort properties throughout Mexico and Central America.

14 15. RHI and RHI-SA are currently responsible for marketing this Universal Lease Program,  
15 both by generating/distributing various promotional materials and brochures and by recruiting  
16 sales agents throughout the United States.

17 16. Under this Universal Lease 'opportunity,' investors are required to invest a minimum of  
18 \$5,000 dollars to participate in the program, but they may invest any amount in excess of this sum.  
19 Investment funds are then wired to YUCATAN's Indiana-based bank account, which funds are  
20 subsequently disbursed for undisclosed purposes.

21 17. Although several different company brochures and promotional materials are distributed  
22 to prospective investors, Universal Lease investors are never apprised as to the financial condition  
23 of YUCATAN, YUCATAN SA, RHI, RHI-SA or AVALON, are never informed as to the uses of  
24 Universal Lease investment funds, and are never afforded financial statements reflecting the  
25 degree of solvency of any of the RESPONDENTS.

26 ...

1 18. According to training materials provided to Universal Lease sales agents, the agents are  
2 instructed to tell prospective investors that the investment funds are "basically being used" to  
3 purchase more resort properties, evidencing the fact that investor funds are being pooled to  
4 provide financing for new acquisitions.

5 19. As part of RESPONDENTS' sales strategy, prospective investors are given the option to  
6 roll part or all of their IRA portfolios into the Universal Lease Program. In doing so, investors are  
7 effectively replacing their existing retirement savings with the Universal Lease timeshare program.  
8 The Universal Lease application even contains a specific form to facilitate the transfer of  
9 investors' retirement portfolios into RESPONDENTS' program.

10 20. At a seminar in Scottsdale, Arizona, a recruiter for YUCATAN SA informed prospective  
11 Universal Lease sales agents that approximately 40 percent of all funds coming through the  
12 Universal Lease Program will originate out of investor IRAs or other similar retirement accounts.

13 *Specifics of the Universal Lease Plan*

14 21. Under RESPONDENTS' Universal Lease Program, and as represented in RHI's associated  
15 promotional materials, investors are purportedly afforded the opportunity to select one of three  
16 separate Universal Lease "options." In actuality, options 1 and 2 are illusory choices, effectively  
17 leaving option 3 as sole Universal Lease Program alternative.

18 22. Evidencing this point, recruiters for prospective YUCATAN SA sales agents coach their  
19 trainees that the Universal Lease's "third option," *i.e.* the investment selection, is the only selection  
20 that need be promoted, offered and sold.

21 23. Under the Universal Lease's alleged "Option 1," investors can purportedly choose to forego  
22 any returns on their investments, and instead chose to utilize a timeshare unit themselves. Under this  
23 option, RHI assigns to the investor, at RHI's own choosing, a specific unit, for a specific week,<sup>1</sup> and  
24

25 <sup>1</sup> According to the promotional materials, a \$5,000 Universal Lease investor electing the purported  
26 "option 1" receives access to the assigned timeshare unit only *every other* year, or only 12 to 13 weeks  
during the 25 year lease period.

1 at a specific location, and only after the \$5,000 sum (or more) is received by RHI. The investor has  
2 no input into the date, quality or location of this timeshare assignment.

3 24. Moreover, the Option 1 purchaser must pay annual management fees to RHI for this  
4 particular election, ranging from \$380 to \$645 per year (with such amounts subject to Consumer  
5 Price Index increases). This translates into an RHI surcharge of \$9,000 to \$16,125 (or more) over the  
6 life of the 25 year timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total  
7 payment of at least \$14,000 in return for 12 weeks of timeshare access (over a 25 year period) at an  
8 undisclosed location during an undisclosed time of year.

9 25. Consistent with these uninviting terms, this vacationing selection is largely ignored in  
10 Universal Lease promotional materials, and the selection receives no coverage in Universal Lease  
11 recruitment seminar for prospective salesmen. Equally relevant, this option would simply have no  
12 applicability to the many investors rolling retirement funds into the Universal Lease program.

13 26. The Universal Lease "Option 2," which ostensibly allows RESPONDENTS' customers to  
14 rent out assigned timeshare units themselves, contains many of the same prohibitive costs and  
15 conditions as that of Option 1. This Option again requires the purchaser to forego any guaranteed  
16 investment returns, and instead imposes substantial annual maintenance fees on the purchaser for the  
17 full 25 year lease term. Prospective Option 2 purchasers must also await a determination by RHI,  
18 after the purchase has been made, as to the location, resort type and permitted dates of use for the  
19 timeshare. The undesirability of this selection is further conveyed by RHI's brochure warning that  
20 this self-renting option will not bring in the same level of revenues as would a professional third  
21 party servicing agent.

22 27. Beyond the apparent financial disincentives, RESPONDENTS' promotional materials  
23 provide no discussion, comments or guidance over the advantages of selecting option 2, other than  
24 the brief suggestion that this self-renting option could be carried out through the "simple placing of  
25 an advertisement in the local paper." This "tip" conspicuously omits any insight into the risks and  
26

1 logistics associated with such an undertaking. Nor does it address the challenges presented in  
2 overseeing the rental of a weekly timeshare unit hundreds or even thousands miles away.

3 28. As with Option 1, Option 2 of the Universal Lease Program is also conspicuously  
4 overlooked in connection with RESPONDENTS' efforts to recruit and train additional sales agents.  
5 Far from providing an overview of Option 2, a recruiter plainly indicated to prospective sales agents  
6 that the only Universal Lease option of interest for sales agents was the investment option, Option 3.

7 29. Unlike the illusory selections of Options 1 and 2, Option 3 is repeatedly touted, highlighted  
8 and glorified in RESPONDENTS' Universal Lease literature. According to YUCATAN SA and  
9 RHI's promotional brochures, investors who "select" Option 3 would be eligible to receive a 9 per  
10 cent per annum return on their timeshare investments every year for a period of 25 years, after which  
11 time the lease would be renewable for another 20 years.

12 30. For an investor to reap the 9 percent per annum return under this Universal Lease option,  
13 the investor was required, as part of his investment, to hire a "third party" management company to  
14 lease the investor's timeshare unit. The Universal Lease materials identify WORLD PHANTASY as  
15 the designated management company for this servicing function. Although the Universal Lease  
16 application does not mandate the selection of WORLD PHANTASY as the investors' servicing  
17 agent, such a selection is the only listed means under which investors can earn the promised 9 per  
18 cent rate of return on their Universal Lease investments.

19 31. To select WORLD PHANTASY as the servicing agent, investors are instructed to  
20 complete a formal "Management Agreement" with the company. This WORLD PHANTASY  
21 Management Agreement is bundled with the Universal Lease promotional and application materials,  
22 and is the single management company identified for servicing AVALON's various resorts.

23 32. RESPONDENTS fail to disclose any financial relationship with WORLD PHANTASY or  
24 indicate whether either company is entitled to receive a percentage of this servicing agent's  
25 management fees.

26 ...

1        33. The "Universal Lease Management Agreement" states: "The Servicer shall have full  
2 power and authority to do those things in connection with such servicing, administration, and  
3 collection activities which it may deem necessary in order to maximize the rental.... Client shall  
4 furnish the Servicer with powers of attorney and other documents necessary or appropriate as  
5 required by the Servicer to enable the Servicer to carry out its servicing and administrative duties  
6 hereunder."

7        34. Once investors have made their investments in RESPONDENTS' Universal Lease  
8 Program and have signed the Management Agreement with WORLD PHANTASY, the investors are  
9 allegedly eligible to receive a 9 percent per annum return on their investments for the life of the  
10 Universal Lease Program, presently set at 25 years. The investors have no functions or  
11 responsibilities following their investments, and YUCATAN, YUCATAN SA, RHI, RHI-SA,  
12 AVALON and WORLD PHANTASY purportedly develop new and/or manage existing rental units  
13 to generate the profits that support the investors' investment returns.

14       35. According to RESPONDENTS' marketing literature, Option 3 of the Universal Lease  
15 provides a multitude of advantages to more traditional investments. The most prominent of these, as  
16 demonstrated during a promotional power point presentation delivered by KELLY, is that the  
17 Universal Lease Program provides a far superior rate of return than most other investments. A  
18 second claim is that the Universal Lease is supported by "debt-free" resort properties, and that as a  
19 result the Universal Lease Program is fully safe and secure.

20       36. According to RESPONDENTS' promotional literature, Option 3 is also the only Universal  
21 Lease option that also allows investors to recoup up to 5 percent of any loss or liquidation penalty  
22 incurred during the process of rolling other investments into RESPONDENTS' Universal Lease  
23 Program. This feature is an added incentive for investors to exchange their existing investment  
24 portfolios into Option 3 of the Universal Lease Program.

25 ...

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1        37. Several Arizona sales agents have since become prolific sellers of the Universal Lease  
2 Program's investment option. One such agent recently boasted that he had sold over 300  
3 investments in RESPONDENTS' program over the past three plus years.

4        38. Of the identified individuals investing in the Universal Lease Program through this  
5 particular sales agent, all had chosen the 'investment selection,' *i.e.* Option 3, and all had chosen  
6 WORLD PHANTASY as their third party servicing agent. Moreover, a substantial number of these  
7 investors were elderly individuals who had made their Universal Lease investments by rolling part or  
8 all of their retirement portfolios into the program. To date, this sales agent has raised several million  
9 dollars in Universal Lease investments.

10       39. Another of RESPONDENTS' Universal Lease sales agents recently encouraged a 75-year-  
11 old Phoenix resident to roll over his entire investment portfolio, approximately \$61,000, into Option  
12 3 of the Universal Lease Program. The elderly gentleman followed the recommendation, moving  
13 his entire annuities portfolio into RESPONDENTS' Universal Lease Program.

14       40. Still another Arizona Universal Lease sales agent, a former paralegal, conceded that she  
15 had sold several additional Universal Lease investments to investors in the greater Phoenix area.

16       41. A fourth Universal Lease sales agent succeeded in selling to One Vision Children's  
17 Foundation, Inc. ("One Vision"), a non-profit organization incorporated in Arizona, a \$1.03 million  
18 investment in the Universal Lease Program. Prior to this investment, the sales agent had  
19 recommended that One Vision choose the third investment option and discouraged any consideration  
20 over the other two options.

21       42. Marketing materials provided to investors by the above-referenced Universal Lease sales  
22 agents indicated that "the Yucatan properties were fully insured against loss. All properties are in  
23 compliance [with] the governing laws. Being in compliance with the regulations to sell leases, all  
24 properties are 100% free of debt. As a result, the Leaseholders have a first lien on the Yucatan  
25 Resort properties."  
26



1       43. Arizona-based sales agents repeatedly echoed this claim that RESPONDENTS' Universal  
2 Lease investments were safe and secure, and that these investments were protected by debt-free  
3 properties. No risk disclosures were made to investors, either during the agents' sales presentations  
4 or through the dissemination of Universal Lease marketing literature.

5       44. Universal Lease sales agents receive commissions constituting at least 10% of the  
6 investors' funds placed into the Universal Lease Program under Option 3. These commission  
7 amounts would increase in cases where affiliated sales agents qualified for sale overrides. The  
8 existence of these commissions has been routinely withheld from investors.

9       45. Yucatan Investment Corp. ("Yucatan Investments") was the subject of an administrative  
10 order by the New Mexico Securities Division on May 18, 1999, for the sale of unregistered, non-  
11 exempt securities - in the form of 9 month promissory notes - through unlicensed sales agents.  
12 KELLY was the sole incorporator, statutory agent, president and secretary of Yucatan Investments,  
13 and Yucatan Investments was based out of the same business address as YUCATAN, YUCATAN  
14 SA, RHI, and RHI-SA. Upon information and belief, Yucatan Investments' operation was the  
15 immediate predecessor to RESPONDENTS' current Universal Lease Program.

16       46. Yucatan Investments was also the subject of an administrative order by the South Carolina  
17 Securities Division on July 26, 1999, for the sale of unregistered, non-exempt securities - in the form  
18 of 9 month promissory notes - through unregistered sales agents.

19       47. Yucatan Investments was also the subject of a Cease and Desist order by the Minnesota  
20 Department of Commerce on October 4, 1999, for the sale of unregistered, non-exempt securities.  
21 KELLY, endorsing as the company's president, consented to this Order on September 15, 1999.

22       48. Yucatan Investments was also the subject of an administrative order by the Connecticut  
23 Department of Banking, on November 7, 2000, for the sale of unregistered, non-exempt securities -  
24 in the form of promissory notes - through unlicensed sales agents.

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51. On October 28, 2002, YUCATAN SA was the subject of an administrative cease and desist order from the Pennsylvania Securities Commission arising out of multiple registration and fraud violations as proscribed under the Pennsylvania Securities Act.

13 IV.

15 (Offer or Sale of Unregistered Securities)

54. The securities referred to above were not registered pursuant to the provisions of Articles 6 or 7 of the Securities Act.

21 | **V.**

23 (Transactions by Unregistered Dealers or Salesmen)

26 57. This conduct violates A.R.S. § 44-1842.

VI.

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

58. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and/or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

a) RESPONDENTS misrepresented to investors that investments in the Universal Lease Program are fully safe, secure, and guaranteed, when in fact investments in RESPONDENTS' foreign timeshare scheme are inherently risky on several levels, including (without limitation):

- 1) The fact that the viability of the Universal Lease Program depends on the future solvency of each of the various entities associated with this venture;
- 2) That annual investment returns from this Program are necessarily dependent upon the profitability of WORLD PHANTASY in successfully renting a sufficient number of AVALON Resort units throughout the 25 year lease period;
- 3) That, in the event of a hurricane or other natural disaster, the undisclosed value of RESPONDENTS' company assets could fall well short of the amount of funds invested into the Universal Lease Program; and
- 4) The fact that the Universal Lease Program is relying almost exclusively on the efforts and purported expertise of a single individual, KELLY.

b) RESPONDENTS failed to disclose to investors any salient financial and/or background information about the issuer, its affiliates, or its principals;

...

...

1 c) RESPONDENTS failed to disclose to investors that a sales commission of at least 10  
2 percent was routinely paid to Universal Lease sales agents consummating timeshare investments, and  
3 that sales agents were eligible for additional monetary overrides;

4 d) RESPONDENTS failed to disclose to investors how, and for what purpose, monies  
5 invested into the Universal Lease Program were being managed, allocated and utilized; and

6 e) RESPONDENTS failed to disclose to investors that administrative orders reflecting  
7 prior securities violations have been issued against RESPONDENTS and their predecessor in several  
8 different jurisdictions.

9 59. This conduct violates A.R.S. § 44-1991.

10 **VII.**

11 **TEMPORARY ORDER**

12 THEREFORE, based on the above allegations, and because the Division has determined  
13 that the public welfare requires immediate action,

14 IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-307, that the  
15 RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active  
16 concert or participation with them, CEASE AND DESIST from any violations of the Securities Act.

17 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain  
18 in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

19 IT IS FURTHER ORDERED that this Order shall be effective immediately.

20 **VIII.**

21 **REQUESTED RELIEF**

22 The Division requests that the Commission grant the following relief against  
23 RESPONDENTS and/or the marital community of KELLY and Lory Kelly:

24 1. Order RESPONDENTS to permanently cease and desist from violating the Act,  
25 pursuant to A.R.S. § 44-2032;  
26

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of KELLY and Lory Kelly be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

#### IX.

#### HEARING OPPORTUNITY

All Respondents may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-307.

**If any Respondent or Respondent Spouse requests a hearing, the Respondent or Respondent Spouse must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 business days after service of this Notice of Opportunity for Hearing. Each Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or by accessing the Commission's Internet web site at [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Notwithstanding the effective 180 day time period cited above, this Temporary Order shall remain in effect from the date a hearing is requested until a decision is entered, unless otherwise ordered by the Commission.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order with written findings of

1 fact and conclusions of law. A permanent Order may include an order of restitution, administrative  
2 penalties, and/or other affirmative action.

3 If a request for a hearing is not timely made, the Division will request that the Commission  
4 make permanent this Temporary Order, with written findings of fact and conclusions of law. These  
5 conclusions of law may include an order for restitution, administrative penalties and/or other relief.

6 Persons with a disability may request a reasonable accommodation such as a sign language  
7 interpreter, as well as request this document in an alternative format, by contacting Shelly M.  
8 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
9 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the  
10 accommodation.

11 **X.**

12 **ANSWER REQUIREMENT**

13 Pursuant to A.A.C. R14-4-305, if any Respondent or the Respondent Spouse requests a  
14 hearing, the Respondent or Respondent Spouse must deliver or mail an Answer to this Notice of  
15 Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 West  
16 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of  
17 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must  
18 accompany the Answer. A cover sheet form and instructions may be obtained from  
19 Docket Control by calling (602) 542-3477 or by accessing the Commission's Internet web site at  
20 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

21 Additionally, any Respondent or the Respondent Spouse must serve the Answer upon the  
22 Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by  
23 hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor,  
24 Phoenix, Arizona, 85007, addressed to Jamie B. Palfai, Esq.


25 The Answer shall contain an admission or denial of each allegation in this Notice and the  
26 original signature of each Respondent/Respondent Spouse or their respective attorneys. A

1 statement of a lack of sufficient knowledge or information shall be considered a denial of an  
2 allegation. An allegation not denied shall be considered admitted.

3 When any of the Respondents or the Respondent Spouse intends in good faith to deny only  
4 a part or a qualification of an allegation, such Respondent or Respondent Spouse shall specify that  
5 part or qualification of the allegation and shall admit the remainder. Respondents and/or the  
6 Respondent Spouse waive any affirmative defense not raised in the answer.

7 The administrative law judge presiding over the hearing may grant relief from the  
8 requirement to file an Answer for good cause shown.

9 Dated this 19 day of September, 2003.

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13 Matthew J. Neubert  
14 Acting Director of Securities  
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